EQUITY: NECESSITY OF ADEQUATE CONSIDERATION FOR SPECIFIC PERFORMANCE: SECTION 3391, CALIFORNIA CIVIL CODE.—Whether or not the Civil Code, in providing that specific performance cannot be enforced against a party to a contract who has received no adequate consideration,[1] only affirmed the then prevailing doctrine of the California courts,[2] it at any rate evidences an apparent legislative intent to make mere inadequacy of consideration a separate and distinct ground for refusing this form of equitable relief.[3] Consequently, through lack of adequate consideration an aggrieved plaintiff may have no standing in equity and be remitted to his action for damages, even though the party against whom he seeks to specifically enforce the contract, entered into the same freely, with knowledge of such inequality as there may be, and without any unfair advantage having been taken of him.[4] But in every such case adequacy is a question of fact depending upon the particular circumstances involved;[5] that its determination may rest on standards other than monetary would seem an obvious dictate of common sense and everyday experience. Yet a contrary contention was raised before the Appellate Court for the Third Appellate District in *O'Hara v. Lynch*,[6] when an administrator attempted to repudiate a contract entered into by his deceased whereby she agreed to sell to her sister certain realty for a price intentionally fixed at considerably below the property's known value, in order to gratify the vendor's desire to favor the sister and give her a home. In pursuance of this contract, which the deceased at all time recognized as a binding and satisfactory agreement, the vendee had been placed in possession and had paid about three-fourths of the purchase money. The ruling against the administrator was proper, it is submitted, because in view of all the facts the vendor had adequate consideration.

The court, however, pointed to a distinction between executory contracts and those fully or partially performed, and intimated that the necessity of adequate consideration as a prerequisite for specific performance applies only to the former. As the subjects of specific performance or contracts executory in nature, it is clear that the requirements of section 3391 have no bearing on executed contracts, as, for example, bought options.[7] But where

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[1] Cal. Civ. Code, § 3391.

[2] See Bruck v. Tucker (1871), 42 Cal. 346; Ward v. Yorba (1899), 123 Cal. 447, 56 Pac. 58.

[3] Morrill v. Everson (1888), 77 Cal. 114, 19 Pac. 190; Wilson v. White (1911), 161 Cal. 453, 119 Pac. 895.

[4] Cummings v. Roeth (1909), 10 Cal. App. 144, 101 Pac. 434; Wilson v. White, supra, note 3. Dictum to contrary in Dore v. Southern Pac. Co. (1912), 163 Cal. 182, 196, 124 Pac. 817, 822.

[5] Morrill v. Everson, supra, note 3; Cummings v. Roeth, supra, note 4; Wilson v. White, supra, note 3.

[6] (July 28, 1914), 19 Cal. App. Dec. 148.

[7] Marsh v. Lott (1908), 8 Cal. App. 384, 97 Pac. 163; Smith v.

executory contracts were concerned the distinction above referred to has been made, and it has been held that after accepting and retaining the agreed consideration the vendor cannot question its adequacy.[8]

T. A. J. D.

EVIDENCE IN EMINENT DOMAIN PROCEEDINGS: ADMISSIBILITY OF EVIDENCE TO PROVE THE VALUE OF LAND FOR PARTICULAR USES.—Another question of interest was presented in the above case of *City of Oakland v. Pacific Coast & Lumber Mill Company*[1] namely, is evidence of the value of land for a particular use admissible as proof in eminent domain proceedings? The authorities on this point are by no means harmonious in the various jurisdictions;[2] and this lack of harmony seems to have been reflected in the decisions of the California Supreme Court on the same question. Although attempts have been made by our courts to reconcile these various decisions, the position taken by the dissenting judges,[3] the view of a court outside this state as to the effect of one of the cases,[4] as well as the significant language in the latest decision of the Supreme Court[5]—all these things would seem to indicate that the decisions in California are far from being in harmony with each other.

The question is soon to be presented again for the determination of the Supreme Court on the rehearing of the judgment of the District Court of Appeal. That court excluded the evidence in dispute on the ground that "damages must be measured by the market value of the land, at the time it is taken, that therefore while evidence that it is valuable for this or that or another purpose may always be given, the value in terms of money, the price which the land would bring for this or that or the other specific purpose is not admissible".

This confusion and conflict of authority seems to have arisen, in great part, from the misapplication of a correct holding upon two extreme, peculiar situations, to all situations. In estimating

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Bangham (1909), 156 Cal. 359, 104 Pac. 689; Fraser v. Bentel (1911), 161 Cal. 390, 119 Pac. 509.

[8] Nicholson v. Tarpey (1886), 70 Cal. 608, 12 Pac. 778; Fleishman v. Woods (1901), 135 Cal. 256, 67 Pac. 276; Meridan Oil Co. v. Dunham (1907), 5 Cal. App. 367, 90 Pac. 469. But see Prince v. Lamb (1900), 128 Cal. 120, 60 Pac. 689; Kaiser v. Barron (1908), 153 Cal. 788, 96 Pac. 806.

[1] (July 28, 1914), 19 Cal. App. Dec. 177.

[2] See authorities collected in Lewis, Eminent Domain, 3rd ed., § 707, notes 12 and 13.

[3] San Diego Land, etc. Co. v. Neale (1888) 78 Cal. 63, 20 Pac. 372, 3 L. R. A. 83; Spring Valley Water Works v. Drinkhouse (1891), 92 Cal. 528, 28 Pac. 681.

[4] Alloway v. Nashville (1890), 88 Tenn. 510, 13 S. W. 123, 8 L. R. A. 123.

[5] Sacramento etc. R. R. Co. v. Heilbron (1909), 156 Cal. 408, 104 Pac. 979.